

1 Wylie A. Aitken (CA SB 37770)
2 wylie@aitkenlaw.com
3 Darren O. Aitken (CA SB 145251)
4 darren@aitkenlaw.com
5 **AITKEN ♦ AITKEN ♦ COHN**
6 3 MacArthur Place, Suite 800
7 Santa Ana, CA 92707
8 Ph: (866) 434-1424
9 Fax: (714) 434-3600

10 Dawn M. Barrios (LA BAR NO. 2821)
11 barrios@bkc-law.com
12 Zachary L. Wool (LA BAR NO. 32778)
13 zwool@bkc-law.com
14 **BARRIOS, KINGSDORF & CASTEIX,
15 L.L.P.**
16 701 Poydras Street, Suite 3650
17 New Orleans, LA 70139
18 Ph: (504) 524-3300
19 Fax: (504) 524-3313

20 Gretchen M. Nelson (CA SBN 112566)
21 gnelson@kreindler.com
22 **KREINDLER & KREINDLER LLP**
23 707 Wilshire Boulevard, Suite 4100
24 Los Angeles, CA 90017
25 Ph: (213) 622-6469
26 Fax: (213) 622-6019

27 ***Plaintiffs' Liaison Counsel***

28 **UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

29 IN RE: TOYOTA MOTOR CORP.
30 UNINTENDED ACCELERATION
31 MARKETING, SALES PRACTICES,
32 AND PRODUCTS LIABILITY
33 LITIGATION

34 THIS DOCUMENT RELATES TO ALL
35 CASES

36 Vincent Galvin,Jr. (CA SB 104448)
37 vincent.galvin@bowmanandbrooke.com
38 Anne O. Hanna (CA SB 120947)
39 anne.hanna@bowmanandbrooke.com
40 **BOWMAN AND BROOKE LLP**
41 1741 Technology Drive, Suite 200
42 San Jose, CA 95110
43 Ph: (408) 961-4501
44 Fax: (408) 279-5845

45 Lisa Gilford (CA SB 171641)
46 lisa.gilford@alston.com
47 **ALSTON & BIRD LLP**
48 333 South Hope Street, 16th Floor
49 Los Angeles, CA 90071
50 Ph: (213) 576-1114
51 Fax: (213) 576-1100

52 ***Defendants' Liaison Counsel***

53 Case No.: 8:10-ML02151 JVS (FMOx)

54 **JOINT REPORT NO. 3 OF
55 PLAINTIFFS' AND DEFENDANTS'
56 LIAISON COUNSEL TO STATE AND
57 OTHER TYPES OF CASES**

58 **Date: September 20, 2010
59 Time: 3:00 p.m.
60 Place: Courtroom 10C**

1 Plaintiffs' and Defendants' Liaison Counsel to State and Other Types of Federal
2 Cases (hereafter "Liaison Committees") submit this Joint Report No. 3. The Liaison
3 Committees have worked in consultation with and cooperatively with the Co-Lead
4 Counsel for the Economic Loss cases and the Personal Injury/Wrongful Death cases in
5 preparing this report and will continue to do so during the pendency of this MDL.
6

7 **I. COLLECTION OF DATA ON STATE AND OTHER TYPES OF FEDERAL
8 CASES THAT INVOLVE UA CLAIMS**

9 The Liaison Committees continue to accumulate a master list of state court cases
10 and other federal cases that involve claims of unintended acceleration ("UA"). These
11 cases are catalogued on an Excel database chart and are being provided to the Court. The
12 database contains the case name, case number, state and court in which it is pending, the
13 presiding jurist, the presiding jurist's contact information, the type of case,¹ the plaintiffs'
14 names, the defendants' names, and the status of each case.² In order to obtain complete
15 and accurate information regarding the identities and contact information of the jurists
16 handling state UA cases, Plaintiffs' Liaison Counsel routinely contacts the clerks' offices
17 of the various state courts to gather this information where it has not been available from
18 an online source or from the questionnaire responses. An updated electronic copy of the
19 database will be provided to the Court at the upcoming Status Conference on September
20, 2010.

21 In response to Plaintiffs' Liaison Counsel's electronic newsletter discussed in
22 Liaison Counsel's Joint Report No.1, many non MDL counsel completed the litigation

24 ¹ The cases will be identified by the following descriptions: Economic Loss Class
25 Action; Personal Injury/Wrongful Death; Lemon Law Individual Claim; Lemon Law
Class Action; Securities Class Action; Shareholder Derivative; and Small Claims.

26 ² The small claims court cases are currently included in the database. In certain
27 jurisdictions discovery is not permitted in small claims cases and there will likely be
28 limited benefit to coordinating issues as regards the proceedings in this Court. However,
this may not be true in all jurisdictions and for those reasons we will continue to provide
information on the cases that are identified.

1 questionnaire as requested. Plaintiffs' Liaison Counsel incorporates the information
2 provided into the database that is maintained by the Liaison Committees. Plaintiffs'
3 Liaison Counsel will send a reminder email to counsel who have not yet completed the
4 questionnaire and will ensure that all new non MDL counsel added to the database will be
5 updated with prior emails and newsletters.

6 In addition, the Liaison Committees intend to network with the Core Discovery
7 Committee and Lead Counsel of the MDL, as well as leading Plaintiffs' attorneys
8 nationally, to maintain timely and accurate data for the Court through any appropriate
9 method.

10 **II. STATUS OF STATE COURT COORDINATION PROCEEDINGS**

11 As previously reported the Liaison Committees are currently aware of efforts to
12 coordinate UA related matters in three states: California, New York and Texas. Both
13 California and Texas granted petitions for coordination, and the coordination proceeding
14 in New York is currently pending. New developments in each of these state court
15 proceedings are discussed below.

16 **A. California**

17 The California Coordinated proceedings have been assigned to Judge Anthony J.
18 Mohr of the Los Angeles Superior Court. It is our understanding that Judge Mohr has
19 expressed a willingness to closely coordinate the California actions with this MDL, has
20 conferred with this Court regarding coordination issues, has adopted several of this
21 Court's prior orders, and has an initial status conference on the California coordinated
22 proceedings scheduled on September 20, 2010, at this Court's courtroom in the Ronald
23 Reagan Courthouse.

B. Texas

On June 25, 2010, the Texas Judicial Panel on Multi-District Litigation consolidated the fifteen (15) actions filed in Texas state court before Judge Robert Schaffer of the 152nd District Court of Harris County. There are currently approximately nineteen (19) cases pending there.

On September 3, 2010 Judge Schaffer had a status conference to discuss preliminary issues associated with the Texas state wide MDL, such as a discovery plan and a Plaintiffs Steering Committee. Pursuant to the Court's suggestion, plaintiff's counsel met and agreed that Jeff Wigington and Robert Hilliard act as Co-Liaison Counsel. The plaintiffs will present an agreed order listing the members of the PSC.

Judge Schaffer ordered the plaintiffs to meet with Toyota to discuss discovery issues prior to the next status conference which is set for October 15, 2010. Texas Co-Liaison Counsel advises that it is Texas' MDL's desire to avoid duplicative discovery, a goal of this MDL. Plaintiffs' Liaison Counsel have indicated that they intend to appear at the major hearings were feasible, particularly at the initial stages to implement the MDL's goals.

C. New York

On June 12, 2010, the Honorable Justice Helen E. Freeman set a briefing schedule on the consolidation motion concerning 16 cases and also denied a motion to stay pending potential consolidation. Judge Freeman is on the appellate panel which will determine whether a coordination proceeding should go forward, and if so, who the jurist will be. The last deadline in the scheduling order passed July 9, 2010. All submissions have been received and are under review, and the Litigation Coordinating Panel hopes to rule on the question of consolidation shortly.

Plaintiffs Liaison Counsel has provided copies of relevant MDL Orders to the Clerk of the Litigation Coordinating Panel for the benefit of the Justices on the Panel and the jurist they select to oversee the NY coordinated proceeding, if any.

1 **III. STATUS OF OTHER FEDERAL NON-MDL ACTIONS**

2 On June 6, 2010, U.S. District Judge Dale S. Fischer granted a motion to
3 consolidate the federal securities actions concerning allegations of unintended acceleration
4 in the Central District of California under the docket number CV 10-922 DSF (AJWx)
5 (the “Securities Actions”). On August 2, 2010 the court appointed Maryland State
6 Retirement and Pension System as Lead Plaintiff to represent the purported plaintiff
7 class, renamed the Securities Action “In re Toyota Motor Corporation securities
8 Litigation”, and set an October 4, 2010 deadline for Lead Plaintiff to file a consolidated
9 amended complaint. The Court has also appointed Lead and Liaison Counsel, with whom
10 Mr. Seltzer and Mr. Robinson have conferred about potential discovery coordination
11 issues. Defendants’ deadline to answer, move, or otherwise respond to the consolidated
12 amended complaint is December 6, 2010. On August 30, 2010 Judge Fischer denied a
13 motion by Lead Plaintiff to lift the discovery stay imposed by the Private Securities
14 Litigation Reform Act, so there can be no coordination of discovery at this time.

15 The Liaison Committees will continue to monitor any federal non-MDL actions and
16 report any relevant information to the Court, and endeavor to coordinate any areas of
17 overlapping discovery, if any, as those litigations proceed.

18 Plaintiffs’ Co-Lead Counsel and Plaintiffs’ Liaison Committee have also made
19 contact with Joel Rochon, who Plaintiffs’ Co-Lead Counsel believes is acting as lead
20 counsel, at least informally, with respect to the UA class action litigation filed in Ontario,
21 Canada, and related Canadian litigation. To inform Mr. Rochon of the status of this MDL,
22 Plaintiffs’ Co-Lead Counsel sent the Case Management Orders issued by this Court to
23 date. Mr. Rochon reports the following information (information that Toyota has not yet
24 confirmed, and reserves the right to supplement):

25 1) Approximately a dozen proposed class actions have been filed in Canada relating
26 to allegations of sudden unintended acceleration in Toyota vehicles. The majority of these
27

1 name Toyota Canada Inc., Toyota Motor Corporation and Toyota Motor North America
2 Inc., as well as other defendants.

3 2.) In these class proceedings, the class members are those who purchased, leased,
4 used, or were passengers, as well as those who have a legal right to a related subrogated
5 claim, and include claims for personal injury and economic loss.

6 7 3.) Formal court proceedings against Toyota have been scarce. However, in Quebec
8 Toyota is attempting to intervene in a Pontiac Vibe case which named only General
9 Motors defendants.

10 11 4.) In all likelihood, there will be a consolidation of the proceedings into a single
12 national putative class proceeding (either by Court order or consent) with the merits being
13 stayed pending the outcome of certification proceedings in the main national action.
14 Although no pleadings have been filed in this regard, it is anticipated that papers will be
15 filed this year.

16 17 **IV. NOTIFICATION OF MDL ACTIVITIES AND ORDERS TO**
18 **STATE COURT JURISTS AND NON-MDL FEDERAL JURISTS**

19 The Court has indicated that it will send formal notification to each jurist presiding
20 over UA related Toyota cases outside of the MDL to advise of the existence of the MDL,
21 the Liaison Committees and all necessary contact information.

22 The Liaison Committees believe that communication with the jurists and counsel
23 in non- MDL cases at this juncture would maximize efficiency and coordination between
24 the MDL and other jurisdictions in light of the Order For Preservation of Documents And
25 Tangible Things, the Stipulated Protective Order, (Order No. 5 and Order No. 5 as
26 amended), and Order No. 7, Coordination of State And Federal Discovery Regarding
27 Phase I F.R.CIV.P. 30(b)(6) Depositions. The Liaison Committees envision that the
28 communications would provide the Court's website, as well as copies of all important

1 Orders. To assist the Court with this task the Liaison Committees will submit to the
2 Court a spreadsheet with the jurists' contact information in a format conducive to large
3 mailing and stand willing to assist the Court in any way it deems useful or necessary to
4 undertake such a project.

5 Additionally, the non-MDL attorneys, jurists and other interested parties can obtain,
6 through this Court's website and/or through communications from the Liaison
7 Committees, information on the MDL proceedings and copies of the Court's orders and
8 hearing transcripts that may be relevant to UA related cases that are not in the MDL.

9 The Liaison Committees will endeavor, to the extent possible, to coordinate as to
10 the substance of any written communication with the non-MDL courts regarding
11 coordination efforts with the MDL.

12 **V. COMMUNICATIONS WITH NON-MDL COUNSEL**

13 Plaintiffs' Liaison Counsel tracks individual non- MDL plaintiff attorney contact
14 information and uses it to disseminate information, such as the Newsletter and
15 Questionnaire annexed to Joint Report 1. See Section I. Plaintiffs' Liaison Counsel have
16 and will continue to electronically inform plaintiffs' counsel in any non-MDL UA actions
17 whenever the Court issues important orders in the MDL that may be relevant to related
18 actions, such as Order Nos. 5, 5 (as amended) and 7. Defendants' Liaison Counsel will
19 forward such information to the various firms that are representing Toyota and its
20 affiliated entities in any UA action.

22 **VI. COORDINATING DISCOVERY**

23 Under the mandate of Order No. 7 the Plaintiffs' Liaison Counsel has timely
24 electronically forwarded every Notice of Deposition received from Co-Lead Counsel. To
25 date depositions noticed for September 9, 10, and 17, 2010 have been sent to non-MDL
26 plaintiffs' counsel. In order to foster cooperation and coordination, and subject to the
27 Court's approval, undersigned counsel will consult with Co-Lead Counsel regarding the
28 formulation of a Coordinated Discovery Order which would provide rules for obtaining

access to the discovery produced by Toyota in the MDL, as well as for obtaining copies of MDL depositions. A clear protocol should be established in conjunction with the Core Discovery Committee regarding the coordination of discovery -- that is, how the Sharing Attorneys may be given a meaningful opportunity to participate in MDL discovery-- and liaison with any non-UA action to promote the overall goal of judicial efficiency and economy.

Plaintiffs' Liaison Counsel, as stated by the Court at the August 24, 2010 conference, anticipate participating in meaningful dialogue with the non-MDL plaintiffs' counsel and the Co-Leads and Core Discovery Committee in the MDL to establish a deposition protocol for Phase II to give non-MDL counsel meaningful participation in the Phase II depositions. This Court has recognized the importance of involvement of non-MDL counsel in Phase I discovery on the record and in its Orders,

Additionally, the Plaintiffs' Liaison Committee has provided in writing to Toyota the names of 73 Sharing Attorneys that have signed Exhibit A to the Stipulated Protective Order. This notice triggers the 20 day period for objection, if any, and resolution of same, to Sharing Attorneys receiving confidential and highly confidential material. To date, Toyota has not objected to any attorney.

VII. CONCLUSION

All of the above steps will promote the important goals of mutual trust and cooperation, as well as illustrate efficiency, so that the concerns of non-MDL litigants, counsel and judges regarding the effect of this MDL on pending litigation can be minimized.

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1 Dated: September 13, 2010

2 Respectfully submitted,

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4 WYLIE A.AITKEN
DARREN AITKEN
5 **AITKEN ♦ AITKEN ♦ COHN**

6 DAWN M. BARRIOS
7 ZACHARY L. WOOL
BARRIOS KINGSDORF & CASTEIX,
L.L.P.

8 GRETCHEN M. NELSON
9 **KREINDLER & KREINDLER LLP**

10
11 By: _____ //s//
12 Gretchen M. Nelson
Plaintiffs' Liaison Counsel

13
14 VINCENT GALVIN, JR.
ANNE O. HANNA
15 **BOWMAN AND BROOKE LLP**

16 LISA GILFORD
17 **ALSTON & BIRD**

18 By: _____ //s//
19 *Defendants' Liaison Counsel*